

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
William L. Massey, Linda Breathitt,  
and Curt Hébert, Jr.

California Power Exchange Corporation

Docket No. ER01-942-000

ORDER ACCEPTING TARIFF AND RATE SCHEDULE  
AMENDMENTS ON AN EMERGENCY BASIS

(Issued January 16, 2001)

On January 16, 2001, California Power Exchange Corporation (CalPX) submitted for filing Amendment No. 23 to the PX Tariff and Amendment No. 6 to the Rate Schedule of CalPX Trading Services Division (CTS). In this order, we accept Amendment No. 23 and Amendment No. 6 for filing.

Proposed Amendment No. 23 and Amendment No. 6

Amendment No. 23 and Amendment No. 6 permit all participants in the CalPX and CTS markets to defer their payments into CalPX and CTS from Noon Pacific Time on January 16, 2001 to 12:00 Noon Pacific Time on January 18, 2001. The CalPX tariff requires that it make payments to PX creditors on Thursday, January 18, 2001. The proposed amendments do not change that requirement. CalPX requests waiver of the Commission's notice requirements in order to allow the amendments to become effective on January 16, 2001.

In support of the amendments, CalPX explains that it expects that, as of January 16, 2001, Southern California Edison Company (SoCal Edison) may fail to make its full payment to CalPX of approximately \$215 million, netted between the CalPX and CTS markets, and that SoCal Edison's failure to make its payment would automatically trigger various default provisions. According to CalPX, "[t]his proposed temporary deferral is designed to allow the minimally required

"breathing room" necessary for the major parties in the California markets to continue discussions toward a longer term solution." <sup>1</sup>

CalPX states that it has contacted various representatives for several market participants. CalPX states that the following participants either support or do not oppose Amendment No. 23 and Amendment No. 6: SoCal Edison; San Diego Gas & Electric Company; Pacific Gas and Electric Company; Williams Energy Marketing and Trading Company; and Enron Power Marketing, Inc. CalPX states that Dynegy Power Marketing, Inc. opposes the filing. CalPX also states that it has not heard definitively from the remaining participants: Duke Energy Trading and Marketing, LLC; Southern Company Energy Marketing, L.P.; Reliant Energy Services, Inc.; and Calpine Corporation.

Given the nature of CalPX's request and the need for the most expedient resolution possible, the notice requirements are hereby waived.

#### Discussion

In light of the extraordinary circumstances in California and, in particular, to avoid the consequences of a possible default under the filed rate schedules, we hereby authorize CalPX and CTS to implement the proposed tariff and rate schedule changes, effective as requested by CalPX.

#### The Commission orders:

(A) For good cause, the notice requirements are hereby waived.

(B) The proposed Amendment No. 23 to the PX Tariff and Amendment No. 6 to the CTS Rate Schedule are hereby accepted for filing, to become effective and terminate as requested.

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<sup>1</sup>CalPX's Transmittal Letter at 3.

(C) CalPX is hereby informed that the rate schedule designations will be supplied in a future order.

By the Commission. Commissioner Hébert concurred with a separate statement attached.

( S E A L )

David P. Boergers,  
Secretary.

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HÉBERT, Commissioner, *concurring*:

Today's order does little more than buy additional time. The various legislative, regulatory, and market participants negotiating a solution to the California energy crisis now have until Thursday of this week, rather than today, to develop a comprehensive strategy. Time is exceedingly short, and the stakes are high.

I find myself compelled to support today's filing by the PX. I understand that certain market participants may oppose the PX's filing. I do not lightly vote to upset the timing of billing and payout obligations of market participants who must depend on established financial calendars.

But the alternative appears far worse. Absent today's order, Edison's failure to make full payment to the PX would trigger various default provisions under the PX Tariff. Default could lead to the PX's failure on Thursday to meet its obligations to the PX's creditors, thereby triggering bankruptcy or other legal proceedings. If so, the first priority of the bankruptcy judge or other official would be to protect the interests of Edison's creditors, rather than the interests of Edison's ratepayers.

For this reason, it is now imperative for California officials to take decisive action and ensure that bankruptcy is averted. (Stated differently, it is imperative that California officials act immediately to ensure that the interests of California ratepayers continue to be protected by California regulators and legislators, rather than a federal bankruptcy judge lacking a public interest obligation to ratepayers.) For example, I understand that California officials may be contemplating the approval of long-term forward contracts that would produce rates to retail ratepayers only 10% in excess of rates prevailing in 1996, at the time of California's entry into electricity restructuring. By accepting such contracts, the State of California could flow prudently incurred costs through to rate base and thereby establish a revenue stream that would keep load-serving utilities financially sound and out of bankruptcy court.

Now is the time for the State of California to exert strong leadership. If possible, I would have tied today's revision of the PX Tariff to a commitment from state officials to accept long-term contracts that are equally acceptable to California power suppliers. In the alternative, if financial institutions are

unwilling to stand behind the obligations of Edison and other load-serving utilities, then the State itself could step forward and act as a purchasing agent on behalf of its utilities. There should be some commitment by the State of California and its leadership to stop the financial bleeding of its utilities and to ensure that, on a going forward basis, the accounts receivable of those providing energy to California will not increase further.

While today's order contains no such commitment, I remain hopeful that California officials will use the "breathing room" offered by today's order to make whatever painful decisions are necessary to avoid even greater pain by California ratepayers.

For these reasons, I respectfully concur.

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Curt L. Hébert, Jr.  
Commissioner